

CARLOS M. RAMIREZ
MAYOR

MONICA D. CUNNINGHAM
CHIEF ADMINISTRATIVE OFFICER

ESTRELLA ESCOBAR
EXECUTIVE ASSISTANT TO THE MAYOR

MARK THREADGILL
EXECUTIVE ASSISTANT TO THE MAYOR



CITY COUNCIL

JAN SUMRALL
DISTRICT NO. 1

ROSE RODRIGUEZ
DISTRICT NO. 2

LARRY M. MEDINA
DISTRICT NO. 3

JOHN COOK
DISTRICT NO. 4

PRESI ORTEGA, JR.
DISTRICT NO. 5

PAUL JOSEPH ESCOBAR
DISTRICT NO. 6

LUIS G. SARIÑANA
DISTRICT NO. 7

ELVIA G. HERNANDEZ
DISTRICT NO. 8

REGULAR COUNCIL MEETING COUNCIL CHAMBERS MAY 15, 2001 9:00 A.M.

The City Council met in regular session at the above place and date. Mayor Carlos M. Ramirez present and presiding and the following Council Members answered roll call: Jan Sumrall, Rose Rodriguez, Larry M. Medina, John F. Cook, Presi Ortega, Jr., Paul Joseph Escobar, Luis G. Sariñana and Elvia G. Hernandez. Absent: None. Meeting was called to order and the invocation was given by Rabbi Ysrael Greenberg, Chabad Lubavitch, followed by the Pledge of Allegiance to the Flag of the United States of America, Mayor's Proclamations & Certificates.

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Motion made by Representative Ortega, seconded by Representative Sariñana, and unanimously carried to approve, as revised, all matters listed under the Consent Agenda unless otherwise noted.
(Items approved under Consent Agenda will be shown with an asterisk {*}).
Representative Ortega was not present for the consent vote.

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Motion made by Representative Sumrall, seconded by Representative Sariñana and carried that the City Council retire into **EXECUTIVE SESSION** pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.076 to discuss any of the following:

Section 551.071	CONSULTATION WITH ATTORNEY
Section 551.072	DELIBERATION REGARDING REAL PROPERTY
Section 551.073	DELIBERATION REGARDING PROSPECTIVE GIFTS
Section 551.074	PERSONNEL MATTERS
Section 551.076	DELIBERATION REGARDING SECURITY DEVICES

- A. An Ordinance approving Class Settlement in a suit styled *Cities of Mercedes and Weslaco (formerly Pharr), individually, and as Rule 42 Class Representatives on Behalf of Themselves and All Other Similarly-Situated Entities v. Rio Grande Valley Gas Co., Southern Union Company, d/b/a Southern Union Gas*, Cause No. C-4558;-95-G-2, authorizing City Officials to take all steps necessary to effectuate settlement, adopting judgment of the court, authorizing Southern Union Gas to increase cost of gas rates for customers inside the City and providing for severability.
- B. The report and recommendations of Thomas C. DeWard concerning Basic Tier rates and surcharges of Time Warner Communications in the City of El Paso.

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Representative Medina, Representative Cook and Representative Hernandez voted Nay.
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Motion made, seconded and unanimously carried to adjourn the Executive Session and reconvene the meeting of the City Council.

Please see page 19 for discussion and action taken regarding item A. above (An Ordinance approving Class Settlement) and page 26 for discussion and action taken regarding item B. above (The report and recommendations of Thomas C. DeWard.)

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*Motion made, seconded and unanimously carried to approve the Minutes for Regular City Council Meeting of April 3, 2001.
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***RESOLUTION**

WHEREAS, in accordance with Section 18.52.040 and Section 18.52.080 of the El Paso City Code, the City Council of the City of El Paso, by Resolution dated the 26th day of September, 2000, after due notice and hearing, ordered OLLIE V. PAGAN and REBA PAGAN, record Owners of the hereinafter described property demolish the structure within thirty (30) days and clean the premises of all weeds, trash and debris within thirty (30) days; and the owners having failed after due notice to comply with such ORDER, any mortgagees, lienholders and other persons having an interest in the property have an additional ten (10) days to demolish the structure within thirty (30) days and clean the premises of all weeds, trash and debris within thirty (30) days; and the mortgagees, lienholders and other persons having an interest in the property failed after due notice to comply with such ORDER, the Street Department proceed to demolish the structure and clean the premises of all weeds, trash and debris.

WHEREAS, the Deputy Director for Building Services Department has reported the cost of doing such work in the amount hereinafter set forth;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the City Council determines the actual cost of demolishing the structure and cleaning the premises of all weeds, trash and debris from the property, more particularly described as:

Lot 10, Block 6, North Loop Gardens #1, an Addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof, recorded in volume 15, page 10, Plat Records of El Paso County, Texas, more particularly described as 512 Center Way,

to be \$5,660.05, performed by the City of El Paso Street Department, \$697.55 incurred by the City Attorney's Office and City Clerk's Office in providing notice, and obtaining title report, making a total of \$6,357.60. The City Council finds that the work was completed on the 22nd day of February, 2001, and approves the costs.

2. That the City Council, in accordance with Section 18.52.040 of the El Paso City Code, declares the above total amount of SIX THOUSAND THREE HUNDRED FIFTY-SEVEN AND 60/XX DOLLARS (\$6,357.60) to be a lien on the above-described property.

3. That the City Clerk is directed to give notice of this lien by filing a copy of this Resolution for record with the County Clerk.

4. That all records of the City Clerk's Office relating to the proceeding against the above described property are made a part of this Resolution by reference.
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***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a release of lien on the following property (legal description on file in the City Clerk's Office) for consideration paid to the City in full satisfaction of amount owed pursuant to this sanitation lien for:

	<u>Lien</u>	<u>Interest</u>	<u>Total Paid</u>
5500 North Stanton Street	\$191.60	\$40.13	\$231.73

.....
***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign a "Park Partner" Agreement with the following organization for maintenance and other services on City property as described in the Agreement.

El Paso Baseball Team

Thomas Manor Park

AND THAT the Mayor be further authorized to sign additional documents and take additional action necessary to fulfill the purpose of this contract.

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***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Personal Services Contract for an Independent Contractor between the **CITY OF EL PASO** and the following Contractors to present workshops at the El Paso Public Library's Staff Development Day at the Transmountain Campus of the El Paso Community College on Friday, May 18, 2001:

1. Lee Moor Children's Home - Mark Struther to present Anger Diffusing workshops - \$225.00
2. Gilbert Guillen, Comedy Defensive Driving School, to present a Defensive Driving/Road Range Workshop - \$150.00.

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***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Volunteer Services Agreement between the City of El Paso and OSEYE Cultural Arts Center for the El Paso Public Library's Open Mike programs. This contract is subject to the approval of the City's Civil Service Commission. There is no cost to the City.

***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Contract between the **CITY OF EL PASO** and **MARCIAL J. GARCIA**, as an Undergraduate Intern for the Department of Planning, Research and Development at the rate of \$7.25 per hour, not to exceed 40 hours per week. The contract period will be from September 1, 2001 through August 31, 2002.

***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Personal Services Contract between the **CITY OF EL PASO** and **GAIL CALDWELL** as a case manager, Domestic Abuse Response Team, for the Police Department at the rate of \$11.98 per hour, not to exceed 40 hours per week. The term of the contract shall be for the period of June 1, 2001 through May 31, 2002.

***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Personal Services Contract for an Independent Contractor between the **CITY OF EL PASO** and **DR. KEITH POLETTE** to be the keynote speaker at the Library's Staff Development Day on May 18, 2001. The total amount of the contract shall not exceed \$250.00.

***RESOLUTION**

You are hereby notified that at 9:00 a.m. on the 12th day of June, 2001 in the Council Chambers of City Hall, #2 Civic Center Plaza, El Paso, Texas, the City Council of El Paso will hold a public hearing on the question of whether the Building located on the property at 7305 Dale Road in El Paso, Texas, which property is more particularly described as:

Lot: 20, Block 10, Stiles Gardens, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 3, Page 9, Plat Records of El Paso County, Texas

is unsafe and dangerous.

According to the real property records of the County of El Paso, Texas, Remedios and Beatriz Alvarez, 7305 Dale Road, El Paso, Texas are listed as the Owners of the real property described herein.

The Owners of said property is hereby ordered to appear before City Council and any mortgagees, lien holders, and other persons having an interest in said property are entitled to appear before City Council at said date, hour, and place to show cause why said Building should not be declared a nuisance and ordered to be abated; and

The Owners, lien holders, mortgagees, or any other person having an interest in the property are hereby required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

If the Owners fail, neglect or refuse to comply with the order of City Council the City may pursue one, or all of the following actions:

- I) the city will perform any and all work needed to bring the property into compliance with this order, at its own expense, but for and on account of the Owners, of said property, the cost of which shall be assessed as a lien against the property and;
- II) assess a civil penalty against the property Owners for failure to repair, remove or demolish said Building in an amount not to exceed \$1000.00 a day for each violation, or \$10 a day if the Owner show that the property is the Owners' lawful homestead and;
- III) the Owners may be confined in jail as permitted by state law and;
- IV) appoint a receiver as permitted by state law.

Any civil penalty or assessment imposed will accrue interest at a rate of ten (10) percent a year from the date of the assessment until paid in full; and

That the City Clerk is ordered to provide notice of this hearing to the record Owner and all other persons having an interest in the property as provided by law.

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*RESOLUTION

You are hereby notified that at 9:00 a.m. on the 12th day of June, 2001 in the Council Chambers of City Hall, #2 Civic Center Plaza, El Paso, Texas, the City Council of El Paso will hold a public hearing on the question of whether the Building located on the property at 1530 Hardaway Street, in El Paso, Texas, which property is more particularly described as:

Lot: All of Lots 27, 28, and 29 and all of Lot 26, save and except that portion of Lot 26 conveyed out in Book 468, Page 306, Real Property Records of El Paso County, Texas dated 10-08-26, Block 112, Government Hill Addition, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 4, Page 50, Plat Records of El Paso County, Texas

is unsafe and dangerous.

According to the real property records of the County of El Paso, Texas, Norma & Pierre Hernandez, 15088 Glendive Dr., Horizon City, Texas 79927 are listed as the Owners of the real property described herein.

The Owners of said property are hereby ordered to appear before City Council and any mortgagees, lien holders, and other persons having an interest in said property are entitled to appear before City Council at said date, hour, and place to show cause why said Building should not be declared a nuisance and ordered to be abated; and

The Owners, lien holders, mortgagees, or any other person having an interest in the property are hereby required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

If the Owners fail, neglect or refuse to comply with the order of City Council the City may pursue one, or all of the following actions:

- I) the city will perform any and all work needed to bring the property into compliance with this order, at its own expense, but for and on account of the Owners, of said property, the cost of which shall be assessed as a lien against the property and;
- II) assess a civil penalty against the property Owners for failure to repair, remove or demolish said Building in an amount not to exceed \$1000.00 a day for each violation, or \$10 a day if the Owners show that the property is the Owners' lawful homestead and;
- III) the Owners may be confined in jail as permitted by state law and;
- IV) appoint a receiver as permitted by state law.

Any civil penalty or assessment imposed will accrue interest at a rate of ten (10) percent a year from the date of the assessment until paid in full; and

That the City Clerk is ordered to provide notice of this hearing to the record Owners and all other persons having an interest in the property as provided by law.

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*RESOLUTION

You are hereby notified that at 9:00 a.m. on the 19th day of June, 2001 in the Council Chambers of City Hall, #2 Civic Center Plaza, El Paso, Texas, the City Council of El Paso will hold a public hearing on the question of whether the Building located on the property at 8212 McElroy Avenue, in El Paso, Texas, which property is more particularly described as:

Lot: The Easterly 0.355 A. of Lot 14 and Westerly 0.955 A. of 15, McElroy Acres, an addition of the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 2, Page 6, Plat Records of El Paso County, Texas

is unsafe and dangerous.

According to the real property records of the County of El Paso, Texas, D. M. Dillon, 8212 McElroy Avenue is listed as the Owner of the real property described herein.

The Owner of said property is hereby ordered to appear before City Council and any mortgagees, lien holders, and other persons having an interest in said property are entitled to appear before City Council at said date, hour, and place to show cause why said Building should not be declared a nuisance and ordered to be abated; and

The Owner, lien holders, mortgagees, or any other person having an interest in the property are hereby required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

If the Owner fail, neglect or refuse to comply with the order of City Council the City may pursue one, or all of the following actions:

- I) the city will perform any and all work needed to bring the property into compliance with this order, at its own expense, but for and on account of the Owner, of said property, the cost of which shall be assessed as a lien against the property and;

II) assess a civil penalty against the property Owner for failure to repair, remove or demolish said Building in an amount not to exceed \$1000.00 a day for each violation, or \$10 a day if the Owner show that the property is the Owners' lawful homestead and;

III) the Owner may be confined in jail as permitted by state law and;

IV) appoint a receiver as permitted by state law.

Any civil penalty or assessment imposed will accrue interest at a rate of ten (10) percent a year from the date of the assessment until paid in full; and

That the City Clerk is ordered to provide notice of this hearing to the record Owner and all other persons having an interest in the property as provided by law.

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*RESOLUTION

You are hereby notified that at 9:00 a.m. on the 12th day of June, 2001 in the Council Chambers of City Hall, #2 Civic Center Plaza, El Paso, Texas, the City Council of El Paso will hold a public hearing on the question of whether the Building located on the property at 1117 N. El Paso Street, in El Paso, Texas, which property is more particularly described as:

Lots: A portion of Lots 7 through 9, (43.5 feet on street, 76.95 feet and 42.3 feet on S, 4 feet on rear, 117.62 feet on N) Block 7, Sunset Heights Addition, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 10, Page 47, Plat Records of El Paso County, Texas

is unsafe and dangerous.

According to the real property records of the County of El Paso, Texas, Roberto Avina, P. O. Box 1316, El Paso, Texas 79947-1316 is listed as the Owner of the real property described herein.

The Owner of said property is hereby ordered to appear before City Council and any mortgagees, lien holders, and other persons having an interest in said property are entitled to appear before City Council at said date, hour, and place to show cause why said Building should not be declared a nuisance and ordered to be abated; and

The Owner, lien holders, mortgagees, or any other person having an interest in the property are hereby required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

If the Owner fail, neglect or refuse to comply with the order of City Council the City may pursue one, or all of the following actions:

I) the city will perform any and all work needed to bring the property into compliance with this order, at its own expense, but for and on account of the Owner, of said property, the cost of which shall be assessed as a lien against the property and;

II) assess a civil penalty against the property Owner for failure to repair, remove or demolish said Building in an amount not to exceed \$1000.00 a day for each violation, or \$10 a day if the Owner show that the property is the Owners' lawful homestead and;

III) the Owner may be confined in jail as permitted by state law and;

IV) appoint a receiver as permitted by state law.

Any civil penalty or assessment imposed will accrue interest at a rate of ten (10) percent a year from the date of the assessment until paid in full; and

That the City Clerk is ordered to provide notice of this hearing to the record Owner and all other persons having an interest in the property as provided by law.

*Motion made, seconded and unanimously carried to approve the request to fill positions on a temporary basis in accordance with Article VI, Section 6.6-3, of the Civil Service Charter Provisions:

- A. Recreation Leader II, Parks & Recreation (1 position)
- B. Recreation Leader III, Parks & Recreation (1 position)

*Motion made, seconded and unanimously carried to approve the following provisional appointment(s) in accordance with Article VI, Section 6.6-2, of the Civil Service Charter Provisions:

- A. Departmental Research Assistant, Police Department (1 position)
- B. Labor Foreman, Streets Department (1 position)
- C. Zoo Assistant Facilities Supervisor, Zoo (1 position)

*Motion made, seconded and unanimously carried to approve the Staffing Table Change for POLICE DEPARTMENT:

Add	1	Police Records Specialist III	GS 15
Delete	1	Police Records Specialist I	GS 11
Delete	2	Police Detective	P 3/5
Add	2	Police Detective	P 3/5
Delete	1	Police Sergeant	P 4/7
Add	1	Police Sergeant	P 4/7
Delete	2	Police Officer	P 3/5
Delete	1	Criminal Intelligence Liaison	PM 75
Add	1	Police Officer	P 3/5
Add	1	Criminal Intelligence Liaison	PM 75
Delete	3	Police Officer	P 3/5
Delete	4	Police Detective	P 3/5
Add	3	Police Officer	P 3/5
Add	4	Police Detective	P 3/5

*Motion made, seconded and unanimously carried to approve budget transfer BT2001-500 MUNICIPAL COURT

To purchase 3 Laptop Computers for 2 courtrooms at Central and 1 at Northeast, for use by Municipal Court Judges and a laserjet printer for the Northeast Court. This is a dedicated fund.

Increase	\$10,000	to	153060/MC0001-100/208010	Data Processing
Increase	\$10,000	to	153060/MC0001-100/104059	Court Tech Rev

*Motion made, seconded and unanimously carried to approve the following Building Services - refunds:
Zoning Board Application refund to M P. Brown & Associates

*Motion made, seconded and unanimously carried to approve the following Building Services - refunds:
Zoning Board Application refund to Ernesto Jaquez

*Motion made, seconded and unanimously carried to approve the request of El Pasoans for Life/Crisis Pregnancy Services to hold a foot race/walk on June 23, 2001 from 7:00 a.m. to 9:30 a.m. Route: Start at 2200 San Jose Avenue, proceed east to Dakota, left to Wheeling, left to Scenic Drive, left to top (near Scenic Drive Park), turn around in the street and return to 2200 San Jose by same route. Approximately 150 persons will participate and 20 spectators are anticipated. This request includes permission to use amplification (2 boom box type units). PERMIT NO. 01-050

*Motion made, seconded and unanimously carried to approve the request of Guadalupe "Wally" Acuña to use amplification (1 Peavey sound system, 2 speakers, 2 microphones) at Shawver Park Pavilion for a Miracle Crusade on May 24 and 25, 2001 from 7:00 p.m. to 10:00 p.m. Approximately 20 persons will use amplification and 100 spectators are anticipated. PERMIT NO. 01-052

*Motion made, seconded and unanimously carried to approve the request of Rotary Club of West El Paso to hold a parade on July 4, 2001 from 7:00 a.m. to 11:00 a.m. Route: Start at Western Hills Church at 530 Thunderbird, proceed to Shadow Mountain, to Mesa, turn right on Mesa, proceed to Champions Place, right on Champions ending in Coronado High School parking lot. Approximately 1,500 persons, 50 vehicles and 50 animals will take part. PERMIT NO. 01-054

*Motion made, seconded and unanimously carried to approve the request of Lee Elementary School PTA to hold a bicycle parade on May 19, 2001 from 9:00 a.m. to 11:00 a.m. Route: School parking lot, west on Vulcan to Howard, north to Hercules and Sierra Vista, east on Sierra Vista to Tetons, Mt. Baldy, Hercules and south on Pandora to school parking lot. Approximately 100 persons and 100 bicycles will take part. PERMIT NO. 01-055

ORDINANCE 14836

The City Clerk read an Ordinance entitled: **AN ORDINANCE FORMALLY ESTABLISHING THE DEVELOPMENT COORDINATING COMMITTEE (DCC), A TECHNICAL ADVISORY COMMITTEE, AND DEFINING ITS MEMBERSHIP, DUTIES AND RESPONSIBILITIES.**

Representative Sumrall pointed out for public information, that this is a Committee which exists already, however, this formalizes the "Department Heads".

Motion duly made by Representative Cook, seconded by Representative Sumrall that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

Motion made by Representative Cook, seconded by Representative Sariñana and carried to postpone one week an Ordinance changing the zoning of a portion of Lot 14, Block 2, Sierra Vista Acres, City of El Paso, El Paso County, Texas (4421 Edgar Park) from A-O (Apartment-Office) to C-1 (Commercial). The penalty being as provided in section 20.68.010 of the El Paso Municipal Code. Applicant/Representative: B. J. Graham, 5121 Round Rock, El Paso, TX 79924. ZC-01011

Representative Rodriguez voted Nay.

Ms. Pat Aauto, Planning Director, presented the case to Council Members. She explained that the request is to rezone the property to C-1 to permit a commercial day care center. She added that the Plan for El Paso 2025 designates the area as commercial and that the City Plan Commission recommends the rezoning of the property by a vote of 4-0. She pointed out that two letters of opposition have been received which has invoked the 221.006(d) requirement.

Mr. Billy Graham, applicant, made statements regarding the property.

Representative Rodriguez explained that the residents in the area have requested restrictions on the C-1 zoning change. She asked whether the applicant was in agreement with the C-1 restrictions.

Ms. Aauto replied that she was not aware of any restrictions and that the City Plan Commission recommendation was C-1 with no restrictions. Ms. Aauto displayed slides of the property and surrounding properties for Council Members. She fielded comments and questions from Representative Cook, Representative Medina, Representative Sariñana, Representative Rodriguez, Representative Sumrall and Representative Ortega.

Mr. Billy Graham, applicant, explained that a fenced in area is located on the side of the building and that he proposes to enlarge the fenced in area and enclose the backyard. He estimates that his day care center can provide for 42 to 46 children, based on the square footage.

Representative Rodriguez stated that City staff was aware of the restrictions, Mr. Luis Flores of the Planning Department and an Assistant City Attorney.

Ms. Aauto explained that Mr. Flores was no longer employed with the City Planning Department and that there is no information in the file that contains any agreed upon restrictions. She proposed postponing the item for one week to allow for meetings with the applicant and residents to finalize the restrictions.

Mr. Charlie McNabb, City Attorney, commented on the method of restriction and that there was some disagreement. Mr. McNabb explained that the zoning change must clearly articulate the land use reasons. He stated that by restricting half of the uses, it would seem as though the C-1 zoning change is not appropriate.

Mr. Chapman, resident, explained that he had had a conversation with Mr. Flores and brought a hand-marked copy of the C-1 commercial district. He explained the restricted uses as mentioned to Mr. Flores to include: no bicycle sales or repair shops, no dry cleaning shops, no shops for the service or repair of home appliances and office equipment, no shops for alcoholic beverages, no gasoline or diesel fueling pumps for refueling motor vehicles, no garage/community parking lots, no automotive tune up service, no automobile or light car lubrication service, no self-service car wash, no outdoor flea market, no ground mounted cellular communication support structure over 100 feet. He stated that he is opposed to storage of outside materials and second hand stores. Mr. Chapman presented slides of his property and surrounding properties to Council Members.

Ms. Adauto explained that the list she has were for specific uses that the opposition was requesting be restricted. She understands that staff is not in agreement with these use restrictions. She stated that she had presented the case as the CPC has recommended with no restrictions.

Mayor Carlos M. Ramirez asked Ms. Adauto to coordinate with all parties and resolve the item.

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ORDINANCE 14837

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF A PORTION OF TRACT 7, H.G FOSTER SURVEY NO. 256, CITY OF EL PASO, EL PASO COUNTY, TEXAS (655 REDD ROAD) FROM A-O (APARTMENT-OFFICE) TO C-1 (COMMERCIAL). THE PENALTY BEING AS PROVIDED IN SECTION 20.68.010 OF THE EL PASO MUNICIPAL CODE.**

Representative Sumrall commented that the Cross of the Hill church would be building an open-air amphitheater, jogging trails and paths.

Motion duly made by Representative Sumrall, seconded by Representative Medina that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

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ORDINANCE 14838

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF A PORTION OF TRACT 5, CINECUE PARK SUBDIVISION, CITY OF EL PASO, EL PASO COUNTY, TEXAS (8236 TROY AVENUE) FROM R-F (RANCH-FARM) TO R-2 (RESIDENTIAL). THE PENALTY BEING AS PROVIDED IN SECTION 20.68.010 OF THE EL PASO MUNICIPAL CODE.**

Representative Sariñana asked Ms. Pat Adauto, Planning Director, whether the owner had agreed to sidewalks. Ms. Adauto explained that Representative Sariñana was thinking of a different zoning change.

Motion duly made by Representative Sariñana, seconded by Representative Hernandez that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

Representative Medina was not present for the vote.
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ORDINANCE 14839

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING ORDINANCE NO. 009 WHICH CHANGED THE ZONING OF A PORTION OF TRACT 2A, BLOCK 41, YSLETA GRANT, A PORTION OF A 20-FOOT ROAD (VACATED), TRACT 20, BLOCK 52, YSLETA GRANT, A PORTION OF TRACT 1A, BLOCK 41, ALL OF TRACTS 18, 19, AND 21, BLOCK 52, YSLETA GRANT AND A PORTION OF A 20-FOOT ROAD (VACATED) AND WHICH IMPOSED CERTAIN CONDITIONS, BY DELETING CONDITION 2 THEREOF FOR LOTS 6, 7, 8, 9, AND 10, BLOCK 1, AMERICAS INDUSTRIAL PARK, THE PENALTY BEING AS PROVIDED IN SECTION 20.68.010 OF THE EL PASO MUNICIPAL CODE.**

Motion duly made by Representative Escobar, seconded by Representative Sariñana that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

Representative Medina was not present for the vote.

ORDINANCE 14840

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF ALL C TRACTS 1-E AND 1-E-6, SECTION 27, BLOCK 81, TOWNSHIP 1, TEXAS & PACIFIC RAILROAD SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS (AT PATRIOT FREEWAY NORTH OF KENWORTHY DRIVE) AS FOLLOWS: PARCEL 1, FROM A-O (APARTMENT-OFFICE) TO C-1 (COMMERCIAL); AND PARCEL 2, FROM A-2 (APARTMENT) TO C-1 (COMMERCIAL), AND IMPOSING CERTAIN CONDITIONS. THE PENALTY BEING AS PROVIDED IN SECTION 20.68.010 OF THE EL PASO MUNICIPAL CODE.**

Mr. Wayne Porter, neighbor, asked that there not be any more bars and liquor stores in this area due to the neighborhood children.

Ms. Pat Aauto, Planning Director, explained the conditions as recommended by the City Plan Commission as follows: 1. 20' building setback abutting the residentially zoned property; 2. 10' landscape buffer within the 20' building setback abutting the residential district; 3. 8' foot screening wall; and 4. restricting the height of all the buildings to not more than one story.

Representative Sumrall questioned what is the purposed use of the building.

Ms. Aauto replied a retail shopping center.

Motion duly made by Representative Cook, seconded by Representative Sumrall that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS None Absent None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

Representative Medina was not present for the vote.

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ORDINANCE 14841

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 13 (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 13.20, (MISCELLANEOUS STREET AND SIDEWALK USE REGULATIONS), SECTION 13.20.040 (SELLING MERCHANDISE PROHIBITED ON AND NEAR PUBLIC RIGHTS-OF-WAY) TO EXPAND AND CLARIFY THE PROHIBITIONS REGARDING SELLING MERCHANDISE AND VEHICLES IN AND NEAR PUBLIC RIGHTS-OF-WAY ON BOTH PUBLIC AND PRIVATE PROPERTY; AND TO AUTHORIZE IMPOUNDMENT OF THE MERCHANDISE AND VEHICLES; AND TO REPEAL SECTION 13.20.050 (STANDS PROHIBITED); THE PENALTY BEING AS PROVIDED IN SECTION 13.20.040 OF THE EL PASO MUNICIPAL CODE.**

Ms. Elaine Hengen, Assistant City Attorney, explained that this is the first of several Ordinances to be amended which would address issues relating to curbstoning. This Ordinance also regulates other types of vending and sales to include all sales not just sales of vehicles. It would prohibit individuals from setting up displays on public rights-of-way and on private property adjacent to the public rights-of-way on arterial streets for the selling of merchandise. She stated that this would impact individuals setting up displays of furniture, flowers, sunglasses, pottery items, etc. on the side of the road and Christmas tree selling locations and other similar tent-type selling activities. This would regulate all types of sales of merchandise outside of businesses. She explained that there are provisions which would allow normal police department enforcement to allow the issuance of citations, placing of notices on the merchandise or give the individual a notice which informs the individual that the police can impound the vehicle and/or items. These Ordinances have gone to the Public Works Legislative Review Committee several times and at the April 27th meeting the Committee recommended and passed a Motion that a minimum fine of \$100.00 and maximum fine of \$500.00 be established for this particular Ordinance.

Representative Hernandez asked what impact this would have to the "Montana Mile".

Ms. Hengen explained that there is an exception for licensed car dealers which states that there is no other set back is required other than what is required under the Code.

Representative Sumrall stated that she is opposed to curbstoning, the selling of vehicles not in a legal manner by individuals not licensed, however, she objects to the restriction of flower sellers and businesses selling products in front of their establishments.

Representative Medina asked Ms. Hengen to explain why the other items were included in this Ordinance to include the increased safety of the individuals doing the selling, impeding traffic on the major arterials and decreasing eyesores.

Representative Cook eluded to a third issue regarding business owners who repair windshields and install car stereos from legitimate shops as opposed to those who repair windshields in parking lots. He stated that this Ordinance would control individuals ability to compete unfairly.

Mr. Charlie McNabb, City Attorney, addressed the issue regarding regulating other sales such as furniture, flowers, etc. He explained that Representative Medina has alluded to the major problems regarding curbstoning as: safety issues on major arterials such as people gawking at cars, unsafe turning and

unsightly issues. He made comments regarding licensed car dealers whereas the licensed car dealers have gone through the appropriate zoning reviews and are regulated for safety and are in the appropriate locations for the appropriate land uses. However, these same issues, the aesthetics and safety issues apply to other merchandise sales (furniture, flower, etc.) as well. Therefore, the City has tried to address these aspects and that the City is specifically looking at those who set up anywhere without the permission of the property owners. The City has made exceptions for businesses which are properly zoned so that businesses in the retail business may also sell retail items in front of their stores and a business in the retail service may also permit others to use the premises immediately adjacent to the store to sell their wares.

Ms. Hengen added she has been working with Mr. Terry Williams, Deputy Director of Building Services, Lt. Almo and Sargent Mark Medina, El Paso Police Department and Ms. Sue Adams, Health District, spending time thinking of every type of sale and facilities to determine whether there is an appropriate exception or not.

Representative Medina explained that after many months of work and assistance from many individuals the City would have an Ordinance that would have "teeth" against the illegal sale of vehicles.

Representative Rodriguez explained that the City will provide public forums to educate the public.

Representative Sariñana questioned when the Ordinance would go into effect and whether the City has adequate staffing to enforce this Ordinance.

Ms. Hengen responded that it would go into effect after the Mayor signs the Ordinance or five days.

Mr. Williams addressed the staffing question by stating that in last year's budget, Council approved the addition of four additional code compliance inspectors and in this year's budget there will be an additional five, all nine have been hired and are currently in training. He added that the Police Department is paramount importance to enforce this Ordinance.

Representative Cook asked if both the Building Services Department and the El Paso Police Department would both be enforcing this new Ordinance.

Mr. Williams responded yes, the Police Department does have authority to enforce all City Ordinance, however the Building Services Department enforces Ordinances on private property and the Police Department enforces on the public rights-of-way. He added that the problems on rights-of-way are more serious as opposed to zoning issues and do not require immediate attention.

Motion duly made by Representative Medina, seconded by Representative Rodriguez that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None.. Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

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ORDINANCE 14842

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 13 (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 13.24 (CITY PARKS AND RECREATION AREAS), SECTION 13.24.010 (SALES OF GOODS AND SERVICES); TO CLARIFY THE PROVISIONS WHICH PROHIBIT SALES OF GOODS WITHIN PARKS; THE PENALTY BEING AS PROVIDED IN SECTIONS 1.08.010 -1.08.030 OF THE EL PASO MUNICIPAL CODE.**

Motion duly made by Representative Medina, seconded by Representative Ortega that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

ORDINANCE 14843

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.12 (FOOD AND FOOD HANDLING ESTABLISHMENTS), SECTION 9.12.010 (DEFINITIONS); TO AMEND THE DEFINITION OF OUTDOOR MARKET; THE PENALTY BEING AS PROVIDED IN SECTION 9.12.890 OF THE EL PASO MUNICIPAL CODE.**

Assistant City Attorney Elaine Hengen explained that this is a provision in the Health and Safety Chapter and it is an amendment to the definition of "outdoor market".

Representative Sumrall asked if the Ordinance amending the definition of outdoor market included "flea markets".

Ms. Hengen responded flea markets are excluded from this Ordinance and that no changes have been made regarding the sales at flea markets. She added that the only change to sales at outdoor markets was the set back requirement from the street and that this same provision would be inserted into the Health regulations as well. Ms. Hengen explained that the downtown vendors and their carts are another exception, they are regulated by the Special Privileges which they hold at their specific locations.

Motion duly made by Representative Medina, seconded by Representative Ortega that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

ORDINANCE 14844

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.08 (ADMINISTRATION AND ENFORCEMENT), SECTION 12.08.220 (IMPOUNDING VEHICLES) TO ADD ADDITIONAL CIRCUMSTANCES FOR THE IMPOUNDMENT OF VEHICLES; THE PENALTY BEING AS PROVIDED IN SECTIONS 1.08.010 TO 1.08.030 OF THE EL PASO MUNICIPAL CODE.**

Ms. Hengen explained that the above Ordinance sets forth the parameters by which the Police Department impounds vehicles. She stated that changes were made to this Ordinance to set forth the clearer authorization for the Police Department to impound vehicles when they are in violation of Section 13.20.040. She explained that the Police Department is authorized to put a Notice on a vehicle or any other item of merchandise which is being offered for sale in violation of the Ordinance. If that item or vehicle is not moved within 12 hours it would be impounded. She added that there are provisions being set up to require the Police Department to have procedures in place to allow individuals to locate their vehicles and/or items of merchandise.

Motion duly made by Representative Medina, seconded by Representative Ortega that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

ORDINANCE 14845

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC), CHAPTER 12.44 (STOPPING AND STANDING AND PARKING GENERALLY), SECTION 12.44.090 (PARKING PROHIBITED FOR CERTAIN PURPOSES); TO DELETE A DUPLICATE PROVISION RELATING TO THE PARKING OF VEHICLES ON ROADWAYS; THE PENALTY BEING AS PROVIDED IN SECTIONS 1.08.010 - 1.08.030 OF THE EL PASO MUNICIPAL CODE.**

Ms. Hengen explained that this particular provision is being removed due to it being addressed in the Ordinance which was passed by Council previously.

Motion duly made by Representative Medina, seconded by Representative Ortega that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

ORDINANCE 14846

The City Clerk read an Ordinance entitled: **AN ORDINANCE AMENDING TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.100 (VENDORS AND SOLICITORS), SECTION 5.100.095 (WHERE VENDING OR SOLICITING MAY BE CONDUCTED WITHIN THE CITY); TO DELETE A REFERENCE TO A REPEALED SECTION OF THE CODE; THE PENALTY BEING AS PROVIDED IN SECTION 5.100.100 OF THE EL PASO MUNICIPAL CODE.**

Ms. Hengen explained that this is a Licensing Section dealing with vending and soliciting being conducted within the City. This Section is being remanded to remove a reference to another provision which has now been repealed.

Mr. Charlie McNabb, City Attorney, stated publicly that Ms. Hengen did an outstanding job on these Ordinances and cross-referenced very diligently so that there would not be any conflicts with any other provisions in the Code.

Motion duly made by Representative Medina, seconded by Representative Ortega that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

ORDINANCE 14847

The City Clerk read an Ordinance entitled: **AN ORDINANCE TO AMEND TITLE 12 (VEHICLES & TRAFFIC), TO CREATE CHAPTER 12.46 (MOBILE FOOD VENDORS), SECTION 12.46.010 (DEFINITIONS); SECTION 12.46.020 (MOBILE FOOD VENDING REGULATIONS); AND SECTION 12.46.030 (VEHICLE REQUIREMENTS AND INSPECTIONS) TO DEFINE AND IMPOSE SALES AND SAFETY REGULATIONS FOR THE OPERATION OF MOBILE FOOD VENDING VEHICLES. THE PENALTY BEING AS PROVIDED IN SECTION 12.84.010 (PENALTY) OF THE EL PASO MUNICIPAL CODE.**

Representative Sariñana questioned the appearances of the mobile food vending vehicles and whether these vehicles are required to pass Health Codes. He mentioned the ice cream vending trucks and the death of a young customer. Representative Sariñana questioned the cleaning procedures of the vending trucks.

Mr. Reginald Bussey, Assistant City Attorney, requested that a portion of the Ordinance be deleted "to amend Title 13 (Streets, Sidewalks and Public Places), Chapter 13.20 (Miscellaneous Street and Sidewalk Use Regulations), Section 13.20.040 (Selling Merchandise Prohibited on and Near Public Right-of-Way) to repeal Subsection B--the provisions pertaining to mobile food vendors". He stated that this Ordinance creates Chapter 12.46 which regulates the operation of motorized mobile food vending units. The main features include the requirement for the installation of safety lights (front and rear), prohibition of sales on any street with a speed limit above 30 miles per hour, no sales within two blocks of a school or day care and the sales would be restricted to day light hours only.

Motion made by Representative Ortega, seconded by Representative Hernandez and unanimously carried to delete an Ordinance to amend Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Section 9.12.030 (Permit - Application - Contents) and Section 9.12.080 (Suspension - Notification); to require operators of mobile food vending vehicles to successfully undergo a vehicle safety inspection as part of the food establishment permitting process and to authorize the Health Authority to suspend permits for the failure to obtain timely inspections. The penalty being as provided in Section 9.12.890 of the El Paso Municipal Code.

NOTE: This item was discussed in Executive Session at the beginning of the meeting. Action was taken at this time.

Motion made by Representative Sariñana, seconded by Representative Sumrall and carried to deny an Ordinance approving Class Settlement in a suit styled *Cities of Mercedes and Weslaco (formerly Pharr), individually, and as Rule 42 Class Representatives on Behalf of Themselves and All Other Similarly-Situated Entities v. Rio Grande Valley Gas Co., Southern Union Company, d/b/a Southern Union Gas*, Cause No. C-4558;-95-G-2, authorizing City Officials to take all steps necessary to effectuate settlement, adopting judgment of the court, authorizing Southern Union Gas to increase cost of gas rates for customers inside the City and providing for severability.

Representative Medina voted Nay.

Mayor Carlos M. Ramirez explained that this was a Class Action lawsuit brought on by lawyers outside of El Paso against Southern Union Gas. He stated that if Council Members approved the Ordinance, Southern Union Gas would have the ability to recuperate from the rate payers, the settlement.

Representative Medina questioned the total amount of pass through expense to the SUG rate payer. He questioned what a transportation customer was.

Mr. Bill Chapman, Chief Financial Officer, responded that \$818,000.00 were due to the Cities of Mercedes and Weslaco. Mr. Chapman explained a transportation customer as one who is not a retail customer, but who sold in bulk at special rates to an industry or a user that is not a residential customer.

Representative Cook explained that the issue was regarding the transportation customers not the regular residential gas user who did not pay the amount of franchise fee.

Mayor Ramirez explained that the Judge refused to amend the Court Order. The Judge stated that this is the settlement, and the settlement allows for the separation of the fees; however, Southern Union Gas has the ability to pass the fees onto retail customers.

Mr. Chapman responded that the City would receive the \$818,000.00 over four years which is approximately half a years franchise revenue from the Gas Company. He explained that the legal fees would be collected, whether Council accepts this Ordinance or not; however, it would not be passed onto the rate payers if Council does not accept this.

Representative Medina asked why the rates were not charged to the transportation customers in the beginning.

Mr. Charlie McNabb, City Attorney, explained that it might have been the company's interpretation that they did not have to pay the City franchise fees on the transportation gas which prompted the other Cities to file this Class Action which the City of El Paso was a part to contest the interpretation. He stated that the Court has ruled that the transportation fees should have been paid; however, now the fees would be paid but passed onto all the rate payers.

Representative Hernandez asked if the City was to secure the \$818,000.00 would the monies be used as the City sees fit, such as street paving.

Mr. Chapman explained that the money would go into the General Fund for the City which the Mayor's proposed budget allocates and City Council approves.

Mayor Ramirez stated that the General Fund is the Fund that funds all the services for the City of El Paso, the money is spent wisely and efficiently.

Representative Sumrall questioned whether this might be considered "double taxation".

Mr. Chapman explained no, it is a franchise fee for the use of the streets and rights-of-way of the City.

Representative Medina responded that he does not think that it is fair to penalize all taxpayers. He explained that there are some taxpayers, both residential and commercial, whose utilities are 100% electric.

Mr. McNabb responded that, while Council Members were in Executive Session, he explained the legal implications of this Ordinance and how it relates to the settlement.

Mr. Richard Fleager, Vice President of Southern Union Gas Company, clarified that the lawsuit was filed in the Lower Rio Grande Valley and that he has not conversed with anyone City staff regarding this. He explained that the concept is about transportation gas. Small businesses buy gas from another party, the gas is then transported into El Paso, Southern Union Gas picks up the transported gas from El Paso Natural Gas and then delivers the gas to the party. Southern Union Gas charges the customer for the delivery of the gas, we do not charge for the gas because the customer has paid for it previously. This lawsuit is about collecting the franchise fees on those revenues. This event happened in 1986 or 1988 and there was a settlement arranged by other attorneys. He stated that if the tax had been taxed as if Southern Union Gas had sold it, then there would have been franchise fees. However, since the revenues went to another party no franchise fees were paid, this is what they are trying to correct. He stated that in this particular case, some Cities did not realize that there were transportation customers on their system. In this particular settlement, Southern Union Gas is trying to state that this is a past issue. Southern Union Gas will collect the monies from the residential customers, and because it was an expense, pay it to the City and once the money is collected then the issue is over. He explained that revenues received by Southern Union Gas are regulated by the City. In this particular case, Southern Union Gas never showed the revenues due to not receiving the revenues initially.

Representative Ortega asked if Council denies this Ordinance, the City is not passing anything on to the rate payer and Southern Union Gas is not out any money, who is going to pay the attorney's fees. He then asked if the City of El Paso rate payers would be paying any attorney's fees. He summarized by stating that the rate payers would not pay any monies and the City would not collect the \$818,000.00.

Mr. McNabb explained that the attorney's fees would be paid by rate payers covered by Ordinances which authorize the recovery of these fees. He added that the issue here of whether the franchise fees should have been paid on transportation gas is a very complex issue. The other Cities did not see it the way Southern Union Gas has and therefore this is a settlement of the issue. He explained that the rate payers of El Paso would not pay anything if City Council does not pass this Ordinance which would authorize the increase in rates.

Representative Medina voted Nay to deny the Ordinance. The Motion to deny passed 7-1.

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ORDINANCE 14849

The City Clerk read an Ordinance entitled: **AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO SIX FLAGS EVENTS, TO TEMPORARILY CLOSE PORTIONS OF MILLS AVENUE, OCHOA STREET AND VIRGINIA STREET FOR THE FIESTA DEL SOL STREET FESTIVAL FROM MAY 22, 2001 THROUGH MAY 29, 2001**

Mayor Carlos M. Ramirez explained that this is a great event and that El Paso would benefit greatly from this. He commended City staff for doing a tremendous job in coordinating with Central Business Association and Six Flags.

Representative Sumrall agreed with Mayor's comments and encouraged everyone to bring their cameras, etc. She was concerned with the lack of advertising for this event.

Mayor Ramirez responded that there is an advertising campaign and that the event would be held May 23rd through the May 29th. He stated that the location of the event would be in the area southeast of the El Paso Times building.

Motion duly made by Representative Hernandez, seconded by Representative Escobar that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

ORDINANCE 14850

The City Clerk read an Ordinance entitled: **AN ORDINANCE PERMITTING CECILIA HENRIC TO USE A PORTION OF MISSION HILLS PARK FROM 1:00 PM UNTIL 6:00 PM ON MAY 19, 2001**

Mr. Charles Nutter, Director of Parks & Recreation, explained that a typographical error was made on page one of the Ordinance. He explained that the proper fee would be \$70.00, the amount is correct on the cover sheet, however it was not correct in the body of the Ordinance. Corrections have been made.

Motion duly made by Representative Sumrall, seconded by Representative Hernandez that the Ordinance be adopted. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Council Members Sumrall, Rodriguez, Medina, Cook, Ortega, Escobar, Sariñana and Hernandez

NAYS: None Absent: None

Whereupon the Mayor ordered that the vote having been cast in favor of the Ordinance, the same be and the same is hereby adopted.

RESOLUTION APPROVING DETAILED SITE DEVELOPMENT PLAN NO. DP-01004, FOR A PORTION OF TRACTS 1E AND 1B1, BLOCK 10, UPPER VALLEY SURVEYS, EL PASO, EL PASO COUNTY, TEXAS (THE 6100 BLOCK OF UPPER VALLEY ROAD), PURSUANT TO SECTION 20.04.180.C OF THE EL PASO MUNICIPAL CODE.

WHEREAS, SUNNY VIEW L.L.C. (the "Applicant") have applied for approval of a detailed site development plan pursuant to Section 20.04.180(c) (Zoning) of the El Paso Municipal Code, to permit the construction and development of a planned residential development with private and public subdivisions; and

WHEREAS, a report was made by the staff to the City Plan Commission and a public hearing was held regarding such application; and

WHEREAS, the City Plan Commission has recommended approval of the subject detailed site development plan; and

WHEREAS, the subject detailed site development plan has been submitted to the City Council of the City of El Paso for review and approval;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. Pursuant to Section 20.04.150 of the El Paso Municipal Code, the City Council hereby approves the detailed site development plan submitted by the Applicant, to permit the construction and development of a planned residential development with private and public subdivisions on the following described property which is located in a R-2/sp/c (Residential/special permit/condition)

A Portion of Tracts 1E and 1B1, Block 10, UPPER VALLEY SURVEYS, El Paso, El Paso County, Texas, as more particularly described by metes and bounds in the attached and incorporated Exhibit "A"; and municipally referred to as the 6100 Block of Upper Valley Road.

A copy of the approved detailed site development plan, signed by the Applicant, the Mayor and the Secretary of the City Plan Commission, is attached hereto, as Exhibit "B" and incorporated herein by reference.

2. All construction and development on the property shall be done in accordance with the approved detailed site development plan and the development standards applicable in the R-2/sp/c (Residential/special permit/condition) District regulations.

3. The Applicant shall sign an agreement to develop the property and to perform all construction thereon in accordance with the approved detailed site development plan and the standards applicable in the R-2/sp/c (Residential/special permit/condition) and District regulations. Such agreement shall be signed and filed with the Zoning Administrator and the Executive Secretary of the City Plan Commission before building permits are issued.

4. This approval shall be void if construction on the property is not started in accordance with the approved detailed site development plan within four (4) years from the date hereof.

Representative Sumrall asked for elaboration.

Ms. Pat Adatao, Planning Director, explained that the property is approximately 67 acres of land located off of Upper Valley Road near Gomez Drive. The property is zoned R-2 residential with a Special Permit which

permitted a Planned Residential Development. This Site Plan is modifying the Site Plan which was approved with the formal Special Permit and it would redesign the two subdivisions.

Motion made by Representative Sumrall, seconded by Representative Ortega and unanimously carried to approve the above Resolution.

Representatives Sariñana and Hernandez were not present for the vote.

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Motion made by Representative Hernandez, seconded by Representative Ortega and unanimously carried to delete the public hearing to determine if the property located at 306 W. Overland Avenue, in the City of El Paso (legal description on file with the City Clerk) is a fire and safety hazard, and a nuisance and whether the same should be repaired or demolished.

Mr. Thomas Maguire, Building Services, explained that due to compliance this item could be deleted.

Representative Sumrall questioned whether the back taxes have been paid. She asked if City staff would provide information regarding the taxes owed on the Agenda.

Mr. Maguire explained that an arrangement has been with the Tax Department.

Mr. Edward Hernandez, attorney with Delgado Acosta Spencer Linebarger Heard & Perez LLP, explained that a payment plan has not been established as of yet, however, the owner has proposed a payment arrangement.

Mr. Charlie McNabb, City Attorney, explained that there is no law which states that the taxes must be paid to the City before the title exchange.

Representative Hernandez explained that due to the historical value of the property, the property needed to be sold.

Representative Medina questioned the feasibility to repair the structure.

Mr. David Etzold, representing Mr. Ted Richardson, explained that the intentions of Mr. Richardson are to rehabilitate and remodel the building into a mixed use project which would have commercial retail on the ground floor and loft apartments on the second floor.

Representative Medina questioned whether Mr. Richardson might seek HUD monies for revitalization.

Mr. Etzold responded that they would explore all avenues regarding monies to include the Empowerment Zone. He commented on the engineering report and explained that the building is not designated "historical" yet, however it was built in 1890.

Representatives Ortega and Escobar were not present for the vote.

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*Motion made, seconded and unanimously carried to postpone one week the discussion and action on an appeal of the Development Coordinating Committee denial of SP-01002 requesting to build an overhead walkway across a portion of public drainage right-of-way to provide access between Lots 36 & 37, Block 7, Ridge View Estates, Unit 2. (Padilla Homes)
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Motion made by Representative Sariñana, seconded by Representative Sumrall and unanimously carried to close the public hearing on Time Warner increase to Basic Tier cable rates effective January 1, 2001. NOTE This motion was made after the discussion below.

Mayor Carlos M. Ramirez explained that during the Public Hearing, there were speakers from the Cable Commission and the public. He asked that individuals limit their comments to three minutes.

Ms. Judy Maddox, Chairman of the Cable Communication Commission, explained that at a meeting held yesterday the Commission Members listened to Time Warner, listened to the report from Mr. DeWard, discussed all the forms and their recommendation to Council is to accept the report from Mr. DeWard.

Representative Sumrall asked what the vote was.

Ms. Maddox explained that the vote was two against and four in favor and that the Chairman abstained from the vote.

Representative Cook commented that the individual who made the Motion to accept stated that the report was very confusing, they do not understand all of the issues and to just go with what the consultant stated.

Ms. Maddox explained that the individual stated that it was confusing, look to the expertise and to follow what the Motion states. She stated that the individual who made the Motion is an attorney.

Mr. Thomas DeWard, consultant, made comments regarding his report. He stated that he believes Time Warner has overcharged for cable rates last year by \$500,000.00. He added that the rates that affect this year will over collect simply on the one issue of dealing with the Social Contract by \$1 million dollars. He explained that the basic rate payers do not have a say, the rate payers must rely on the City Council to take action. He stated that if this item goes to the Federal Communication Commission it would cost more, He stated that he is confident in his position.

Representative Sariñana asked for specific amounts.

Mr. DeWard believes that Time Warner violated the Social Contract, therefore, the City can petition to the FCC and if the FCC agrees with the City, Time Warner would be ordered to refund the \$0.43 they added to the basic rate in the year 2000, which totals approximately \$500,000.00. He continued that this year Time Warner has put \$0.81 into the basic rate which collects approximately \$91,000.00 per month, or over \$1 million dollars.

Representative Sumrall commented to Mr. DeWard that his report does not seem objective. She stated that the basic rate payer would not be affected it would be those individuals with expanded systems.

Mr. DeWard responded that he is looking after the basic rate payer. He then elaborated on language regarding the Social Contract and what encompasses a basic and expanded service.

Representative Medina thanked Mr. DeWard for his report. He stated that he does not have a problem going to the FCC so that the FCC make an interpretation.

Representative Sariñana asked Mr. DeWard what the chances were regarding receiving a favorable ruling from the FCC.

Mr. DeWard explained that he has never appeared before the FCC and that he has some very valid arguments. He stated that Time Warner has commented that they have done this type of thing before in

hundreds of communities and have not been challenged before. He explained that if he is correct, hundreds of other communities would benefit from this.

Representative Sumrall responded Mr. DeWard would like to make El Paso an example for other cities and that these other cities would want Mr. DeWard to represent them. She stated that it seems self-serving of Mr. DeWard to make these types of statements.

Mr. DeWard responded that he is a semi-retired accountant and that he has done work for the City in the past. He stated that he is not looking for any work but would advise people on a pro bono basis.

Ms. Maddox corrected a statement she made previously. She explained that she conferred with the Cable Commission's very capable secretary, Ms. Debbie Brown, and that the vote was 3 to 2.

Representative Sariñana asked if Mr. DeWard received the proper documentation from Time Warner.

Mr. DeWard responded that Time Warner believed he was going beyond the scope of his contract with the City. He stated that he did not receive everything that he wanted, however, he did have enough information to write and support this report. He added that there is the issue that the City of El Paso is entitled to as much money as it can get and the issue of the surcharge that Time Warner imposed and collected \$560,000.00 from the subscribers here. He stated that Time Warner has collected the franchise fee on the \$560,000.00 and that he asked Time Warner if they have remitted the monies back to the City. He believes that the City has been shorted \$28,000.00 on franchise fees.

Ms. Susan Patten, Vice President of Government and Public Affairs with Time Warner, clarified that there is not \$500,000.00 on the table. She stated that last year's rates are not an issue and the FCC rules are extremely clear in that the City has one year to review rates. She explained that the only rates in discussion are this year's rates. She explained that Time Warner has 225 employees here in El Paso who benefit and that all the money does not leave this community. She clarified that the FCC Order, as read by Mr. DeWard, is accurate except that it ignores some clear language in the Social Contract which changes the rules. Finally, the scope of work is important when doing this sort of process in that it provides the parameters within which one can reasonably work. She stated that this is a legal issue, not an accounting issue, which is why she believes the City has called upon an attorney to investigate these issues. Time Warner has presented the City with facts and information that Time Warner believes demonstrate that the consultant's conclusions are legally unsound. Time Warner is prepared to contest the findings of the consultant if the City would pursue this issue with the FCC.

Mr. Charlie McNabb, City Attorney, explained that Mr. West could not be here today.

Mr. Abel Rodriguez, Cable Commission member, stated that the City has spent money regarding this issue and that the Social Contract states that the City can only look into something a year later. He added that the City did miss that deadline. However, if Time Warner did violate the Social Contract, the City would have to go to the FCC for further investigation.

Representative Cook asked Mr. Charlie McNabb, City Attorney, if the City did miss the challenge deadline for filing.

Mr. McNabb cautioned Council Members stating that individuals who have spoken today are not attorneys and that there are legal arguments on both sides. He declined speaking on the issue in open session.

Motion made by Representative Hernandez, seconded by Representative Sariñana and unanimously carried to postpone one week the report and recommendations of Thomas C. DeWard concerning Basic Tier rates and surcharges of Time Warner Communications in the City of El Paso.

Representative Medina asked if postponing this item would require that the City pay Mr. DeWard an additional fee.

Mr. Charlie McNabb, City Attorney, stated yes and added that if Council Members had any further questions for Mr. DeWard that they do so today.

NOTE: This item was discussed in Executive Session at the beginning of the meeting. Action was taken at this time.

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No action was taken regarding the request to discuss and present the suggestion of including a Recreational Vehicle (R.V.) Club Park such as a Good Sam Club along with the proposed arena by Mrs. Chester Raleigh and Representative Luis G. Sariñana.

Mrs. Chester Raleigh, Area Representative for Area 11 for the Good Sam Chapters of Texas, explained that she is here today to ask Council Members to consider some recommendations regarding the new arena. She explained what "Good Sammers" are and added that they are also a charitable organization. She explained that the Good Sammers have two "Samborees" a year, one in the fall and one in the spring and that Good Sammers spent approximately \$600,000.00 at these Samborees.

Representative Hernandez questioned Mrs. Raleigh why the Good Sammers go to Las Cruces instead of El Paso.

Mrs. Raleigh explained that the City of El Paso does not have a facility which would house 1,000 rigs, including utilities and a dump station.

Representative Sumrall asked Mrs. Raleigh when the Good Sammers attend a Samboree do the Good Sammers pay for the utilities or is that furnished by the hosting City. She also asked if individuals, not attending a Samboree, would they be invited to park their vehicles along with the Good Sammers. She also remarked that there were some developers interested in establishing RV parks on the Westside, however, if the arena was to be built downtown the space would not be adequate for the RVs.

Mrs. Raleigh explained that the Good Sammers ask these individuals to pay the registration fee for the Samboree which helps to alleviate some of the expenses. Mrs. Raleigh explained that the downtown proposed site would not be appropriate due to the City not having the facilities.

Mr. Don Woodward, Texas Director of the Good Sam Chapter, stated that when the Good Sammers go into a community the Good Sammers rent the facilities which is established as a per rig payment. He explained that if an individual wanted to stop and attend the Samboree they would be required to pay for registration fee, however, if the individual just wanted to spend the night he would not agreeable to this proposition. He explained that there are 79,000 Good Sam Members in the State of Texas. He added that there are other RV clubs which might utilize a facility such as they are recommending.

Mrs. Raleigh thanked Representative Sariñana for placing this item on the agenda and said they would like El Paso to have a facility in the near future.

Representative Ortega asked Mrs. Raleigh to continue conversing with Representative Sariñana and/or other Council Members, regarding the idea of an RV facility. He added that El Paso does not provide a facility for RV dumps and he would like to see this situation rectified.

Representative Sariñana stated that El Paso is missing out on some great opportunities and he would like to see the City build a facility for these RVs.

Ms. Monica D. Cunningham, Chief Administrative Officer, explained that the City would investigate all possible input regarding specifications, etc.

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*Motion made, seconded and unanimously carried to postpone one week the discussion and action that the Mayor be authorized to sign an Agreement with Russun, L.P., referred to in the City Council Resolution dated March 20, 2001, concerning the I-10 Commercial Subdivision. (Risher Gilbert, attorney for applicant)

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Motion made by Representative Sumrall, seconded by Representative Hernandez and unanimously carried that the following Ordinances, having been introduced pursuant to Section 3.9 of the El Paso City Charter, be advertised for public hearing:

- A. An Ordinance amending Ordinance 8064 (The Classification and Compensation Plan) to Create the New Class of Water and Wastewater Economic Analyst. The Code is 5442. The Grade is EX J.
- B. An Ordinance permitting Life Community Church to use a portion of Eastwood Album Park from 8:00 AM until 1:00 PM on June 17, 2001 for a Father's Day Service and BBQ. Fee: \$60.00 **(District 5)**
- C. An Ordinance permitting Orlando Fonseca II to use Shawver Park Pavilion from 8:00 AM until 10:00 AM on September 30, 2001 for a Pet Blessing Ceremony. Fee: \$57.50 **(District 7)**
- D. An Ordinance amending Title 2 (Administration and Personnel), Chapter 2.44 (Courts); by amending Section 2.44.040 (Practice and Procedure) to revise the procedure for payment of citations in the Municipal Court; the penalty being as provided in Sections 1.08.010 - 1.08.030 of the El Paso Municipal Code.

PUBLIC HEARING WILL BE HELD ON MAY 29, 2001 FOR ITEMS A - D

Public Hearings will be held as part of the regular City Council meeting which begins at approximately 9AM. All interested persons present shall have an opportunity to be heard at that time. After the public hearings, Council may also delay taking action on Ordinances, no requirement is made by Section 3.9B of the El Paso City Charter to publish any further notice. Copies of all Ordinances are available for review in the City Clerk's office, 2 Civic Center Plaza, Monday through Friday, 8AM to 5PM.

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Motion made by Representative Sariñana, seconded by Representative Sumrall and unanimously carried to postpone four weeks the introduction of an Ordinance amending Chapter 9.50 (Smoking in Public Places), by adopting a comprehensive revision of Chapter 9.50 (Public and Workplace Smoking Restrictions).
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ADDITION TO THE AGENDA

***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign and submit a grant application from the City of El Paso Police Department for an Automobile Theft Prevention Grant (ninth year) in the amount of \$1,178,631.00 from the Automobile Theft Prevention Authority - State of Texas, for the purpose of continuing the efforts of the Department in reducing auto theft in El Paso County. In-Kind Match for the operation of the task force is \$1,115,716.68.

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***RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor is authorized to sign an Interlocal Agreement between the City of El Paso, the El Paso Community College District, the County of El Paso, the University of Texas at El Paso, the El Paso Independent School District, the Ysleta Independent School District, Canutillo Independent School District, Fabens Independent School District, Anthony Independent School District, Region XIX and such other governmental entities that own and operate El Paso Area Libraries for to enable such entities to share respective library resources as a cooperative network.

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*Motion made, seconded and unanimously carried to approve the Staffing Table Change for LEGAL DEPARTMENT:

Add 1 Secretary III GS 19
Add 1 Assistant City Attorney

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RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT Southern Union Gas is authorized to implement the attached Cost of Gas Clause for its El Paso Service Area for meters read on and after May 15, 2001.

Mr. Bill Chapman, Chief Financial Officer, explained that this is a revision to the Cost of Gas Clause for Southern Union Gas which allows the Cost of Gas Clause to include any types of financial instruments, hedging, etc. to mitigate the cost of gas in the future.

Representative Sariñana asked Mr. Fleager if Southern Union Gas was going to increase the service area for meters.

Mr. Richard Fleager, Vice President of Southern Union Gas Company, stated no and explained that the Cost of Gas Clause did not include the cost of financial instruments and that the new clause would allow the cost of financial instruments which would preserve the City's regulatory authority to review these actions, after the fact.

Representative Ortega explained that the cost of financial instruments basically is the cost of doing business.

Representative Medina stated that he would feel more comfortable with the City reviewing the financial instruments before the fact rather than after the fact.

Mr. Fleager explained that this was the original proposal, however, there was a City concern regarding the City's position as regulatory party if the City is part of the process before the fact.

Mr. Chapman explained that it is not the regulatory function to be a business partner and make business decisions for a party that the City is regulating. He stated that the City's function is to review the documents and maintain that Southern Union Gas prudently purchased the gas.

Ms. Nanette Williams, Assistant City Attorney, explained that in natural gas cases, where the outside consultants are retained for rate making procedures, the City can recover the cost from the utility.

Representative Rodriguez asked Mr. Fleager if he could provide an estimated cost that Southern Union Gas would be spending in the future.

Mr. Fleager responded that last year Southern Union Gas did not buy any financial instruments and he added that the company has not stated that they would be buying any this year, however, the company would like to have the financial instrument as an option.

Representative Cook asked Mr. Chapman and Ms. Williams regarding interest rates on over collections and under collections.

Ms. Williams commented on the 9% and 6% for over collection and under collection.

Motion made by Representative Sumrall, seconded by Representative Escobar and unanimously carried to approve the above Resolution.

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Motion made by Representative Cook, seconded by Representative Escobar and unanimously carried that the City Council retire into **EXECUTIVE SESSION** pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 - 551.076 to discuss any of the following:

Section 551.071	CONSULTATION WITH ATTORNEY
Section 551.072	DELIBERATION REGARDING REAL PROPERTY
Section 551.073	DELIBERATION REGARDING PROSPECTIVE GIFTS
Section 551.074	PERSONNEL MATTERS
Section 551.076	DELIBERATION REGARDING SECURITY DEVICES

- A. TNRCC Docket No. 2001-0099-AIR-E
- B. Joseph A. White III, et. al. vs. General Motors Corp., et. al., PIN Number: 5000-255-174, Our File No. 96-S-69 (551.071)

Motion made, seconded and unanimously carried to adjourn the Executive Session and reconvene the meeting of the City Council, during which time motions were made as follows:

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Motion made by Representative Medina, seconded by Representative Cook and carried that matter styled **TNRCC Docket No. 2001-0099-AIR-E** be **SETTLED** as recommended by the City Attorney.

Mayor Ramirez was not present for this item. Representative Rodriguez was not present for the vote.

Motion made by Representative Medina, seconded by Representative Sariñana and carried that the City Attorney be **AUTHORIZED TO ACCEPT CASH OPTION IN THE CLASS ACTION** lawsuit entitled **JOSEPH A. WHITE III, et. al. vs. GENERAL MOTORS CORP., et. al.**; PIN Number: 5000-255-1740, C File No. 96-S-69, as recommended by the City Attorney.

Mayor Ramirez was not present for this item. Representative Rodriguez was not present for the vote.
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Motion made by Representative Sariñana, seconded by Representative Sumrall and unanimously carried to adjourn this meeting at 12:50 p.m.

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Carole Hunter

Carole Hunter, City Clerk



Charles McNabb, City Attorney